

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA, :
Plaintiff, : Case No. 3:10cr00210-22
vs. : District Judge Walter Herbert Rice
Chief Magistrate Judge Sharon L. Ovington
DAVID GUTIERREZ-DE LA PENA, :
Defendant. :

REPORT AND RECOMMENDATIONS¹

This case came on for hearing on February 12, 2013. The United States was represented by Assistant United States Attorney Andrew Hunt and Defendant was represented by Attorney Robert F. Krapenc.

The parties have entered into a plea agreement which has been filed of record. The undersigned carefully inquired of Defendant regarding his understanding of the agreement as well as his competence to understand the agreement. Having fully inquired, the undersigned Judicial Officer finds that Defendant's tendered plea of guilty to Count 1 of the Fourth Superseding Indictment is knowing, intelligent, and voluntary. Based on the statement of facts as set forth in the plea colloquy, the undersigned finds that there is a

¹ Attached hereto is NOTICE to the parties regarding objections to this Report and Recommendations.

sufficient factual basis for finding Defendant guilty as to Count 1.

It is accordingly **RECOMMENDED** that the Court accept Defendant's plea of guilty to Count 1 of the Fourth Superseding Indictment and find Defendant guilty as charged in such Count of conspiracy to distribute and possess with intent to distribute 1 kilogram or more of a mixture or substance containing a detectable amount of heroin in violation of Title 21 U.S.C. §§ 846 and 841(a)(1) and (b)(1)(A).

Pending the Court's acceptance of Defendant's plea, Defendant has been referred to the Probation Department for a pre-sentence investigation.

February 15, 2013

s/Sharon L. Ovington

Sharon L. Ovington

Chief United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).